IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 10TH OCTOBER 2006 / 18TH ASWINA 1928

CRL.A.No. 24 of 2003()

SC.296/2000 of ADDL. DISTRICT & SESSIONS COURT (ADHOC-I), THODUPUZHA

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APPELLANT: ACCUSED

MICHEAL, S/O. DEVASIA, AGED 54,
MAPRAKAROTU VEEDU, PANICKENKUDY KARA,
KONNATHADY VILLAGE, UDUMBENCHOLA TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.M.V.SABU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, VELLATHOOVAL,
IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

CRL.A. 24/2003

DATED THIS THE 10TH DAY OF OCTOBER, 2006

JUDGMENT

The appellant was found guilty, under Section 8(2) of the Abkari Act, in short 'the Act' and therefore, was convicted and sentenced thereunder, to undergo simple imprisonment for three months and to pay a fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for a further period of one month, in Sessions Case No.296/2000 on the file of the Additional District and Sessions Court (Ad hoc-I), Thodupuzha. The same is under challenge, through this appeal.

2. The prosecution case is that when PW3, the police constable attached to Vellathooval Police Station and PW5, the Sub Inspector of that police station, were on petrol duty, they received information that illicit arrack was stored and sold in the house of the appellant. Accordingly, after sending Ext.P3 search memo to the Court, they had proceeded to the house of the appellant.

Seeing them, the appellant ran and escaped through the kitchen side of his house. He was intercepted and arrested. On search, MO3, a bottle with 750 ml of arrack covered with MO2 newspaper and MO1 series covers, were seized under Ext.P1 seizure mahazar. It was send for chemical analysis report to the chemical examiner's laboratory, Eranakulam and Ext.P5 chemical analysis report was obtained. It show that the sample of arrack send for test, contained Ethyl alcohol with 40.5% by volume. The prosecution, therefore, proceeded against the appellant, by filing a final charge.

3. The prosecution examined six witnesses and marked five documents. MOs1 to 3 were also marked and identified. It was after appreciating the evidence, the Court below found the appellant guilty, and convicted and sentenced him, as stated above.

4. I heard the arguments advanced by both the learned counsel for the appellant and the prosecutor.

5. PWs1 and 2 were the independent witnesses, who attested Ext.P1 seizure mahazar. They, however,

turned hostile to the prosecution case. The question that therefore, arise is whether the evidence of the departmental witnesses, PWs3 and 5, could be accepted, in the light of the evidence of PW4, the secretary of Konnathady Grama Panchayat, within which limit the house of the appellant is situated, who issued Ext.P2 ownership certificate, certifying that the house from where MO3 illicit arrack detected was owned and occupied by the appellant.

6. Ext.P2 is the certificate issued by the Konnathady Grama Panchayat, certifying that the building from where the seizure took place, was assessed in favour of the appellant, for the year 1993-94 to 1997-98. The learned counsel for the appellant contended that the period of ownership expired in the month of March, 1998 and where as the occurrence took place on 20.12.1998. It is hence contended that on the relevant date of seizure, the prosecution did not prove that the house actually belonged and possessed by the appellant.

7. Except this contention, there is no evidence adduced, when the prosecution had established through Ext.P2 that house was assessed in the name of the appellant. If the assessment was not continuing after the year 1997-98, the appellant ought to have adduced an independent evidence to show that he is not in the possession or the ownership of the house.

8. In the above facts situation, I hold that the appellant was occupying the house and the seizure took place from his house. Moreover, he was also arrested, while he was trying to escape, on seeing the police. This piece of evidence, showing his presence in the house, is not challenged through any defence evidence. Therefore, even though PWs1 and 2 had turned hostile, in the light of Ext.P1 seizure mahazar and Ext.P2 the ownership certificate issued by PW4, I accept the evidence of PWs3 and 5.

9. There is no material to show or any evidence adduced by the appellant, that he was entitled to possess 750 ml of illicit arrack, seized from his house.

Therefore, there is violation of Section 8(2) of the Act. Hence, I sustain the conviction.

10. The sentence, as prescribed under Section 8 (2) of the Act is for ten years and a fine of Rs.1,00,000/-. In the case at hand, the learned Magistrate was very lenient in imposing the sentence of simple imprisonment of three months and the amount of fine of Rs.1,00,000/-, with default sentence of simple imprisonment for one month. Therefore, I find that there is nothing to interfere with the sentence as well.

11. In view of the above discussions, I hold that the appeal is without any merit and is dismissed in confirmation of the conviction and sentence passed by the trial Court.

The appellant is entitled to set off, as per the law.

J.M.JAMES
JUDGE

mrcs